

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1997)

MD Docket No. 96-186

**REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),¹ by its attorneys,
hereby submits its reply regarding the Notice of Proposed Rulemaking in the above-captioned
docket.² The record confirms PCIA's conclusion that the Commission has not justified the
extraordinary increases in the per unit charges to be levied in the CMRS Mobile Services,
CMRS One-Way Paging, and private wireless radio fee categories or the level of funds to be

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, FCC 97-49 (Mar. 5, 1997) (Notice of Proposed Rulemaking) ("Notice"), *Erratum*, Mimeo No. 72735 (Mar. 7, 1997). The Notice was published in the Federal Register on March 10, 1997, 62 Fed. Reg. 10793. PCIA filed opening round comments on March 25, 1997. Pursuant to the Federal Register publication, reply comments are due April 4, 1997.

obtained from licensees in these services. Indeed, the record makes clear that the regulatory fee amounts for these fee categories in fact should be dramatically reduced in light of the substantial Congressional and Commission deregulation of CMRS Mobile Services, CMRS One-Way Paging Services, and private wireless radio services. Interested parties also concurred that all CMRS messaging services, whether two-way or one-way, should be subject to a different (and lower) regulatory fee payment than CMRS Mobile Services.

A. The Proposed Regulatory Fee Increases for CMRS Mobile Services, CMRS One-Way Paging, and Private Wireless Radio Services Have Not Been Adequately Explained

In its opening comments, PCIA pointed out that the *Notice* fails to provide sufficient information to permit interested parties — particularly including the telecommunications industry, which now bears the burden of funding over 80 percent of the Commission's budget — to determine whether the proposed regulatory fee rates for fiscal year 1997 are consistent with Section 9 of the Communications Act of 1934, as amended.³ Like PCIA, several of the commenters noted that the Commission has provided very little information about its cost accounting system and the manner in which costs are allocated to particular fee categories for regulatory activities.⁴ Indeed, as pointed out by GE Americom, the *Notice* contains “no

³ 47 U.S.C. § 109.

⁴ See Comments of Comsat Corporation at 9-10 (“[T]he [*Notice*] does not disclose, explain or even *summarize* the accounting system from which it derives the proposed fees in this proceeding. . . . Consequently, parties cannot evaluate the agency's cost accounting system, suggest improvements, or identify errors.”) (emphasis in original); Comments of GE American Communications, Inc. (“GE Americom”) at 3 (“As an initial matter, the *Notice* provides virtually no background regarding how the accounting system was designed and implemented.”).

description of what methods were used to ensure that the system properly distinguishes between activities that fall within the four categories identified by statute and those that do not. . . . [T]here is no discussion of how the Commission's accounting system separates out and excludes costs relating to [authorization of service] activities from its regulatory fee calculations."⁵

PCIA reiterates the statements made in its opening comments concerning the failure of the *Notice* to provide additional information necessary to permit an informed evaluation of the proposals contained therein. Similarly, there is still no justification for the Commission to rely on the fiscal year 1996 allocation of actual regulatory costs for fiscal year 1997, given the nature of the Commission's regulatory activities thus far in fiscal year 1997. Finally, the Commission has not provided any explanation why its new cost accounting system results in a much different allocation of actual costs for the Commercial Mobile Services, Commercial One-Way Paging Services, Private Mobile Radio Services, and various other private licenses than the prior formulas that relied on full time equivalent number of employees, which also were purportedly cost-based.

The deficiencies in the data and description of methodology renders the Commission's fiscal year 1997 regulatory fee proposals incapable of meaningful analysis. Substantial questions remain as to whether the suggested fees contained in the *Notice* are in compliance with the Congressional grant of authority as well as the Commission's own statements as to its basic regulatory fee policies. Moreover, given the transfer of funding obligations for the Commission's regulatory activities from Congress to the telecommunications industry and the

⁵ GE Americom Comments at 3.

paucity of meaningful data supplied by the *Notice*, the Commission is insulated from any effective oversight of its collection and expenditure of funds to support its regulatory activities.

B. The *Notice* Proposes Excessive Per Unit or Per License Fee Increases for Various Wireless Fee Categories

Based on its unexplained determination that various wireless services were responsible for actual regulatory costs in fiscal year 1996 exceeding the amounts associated with the regulatory fees collected in fiscal year 1996, the Commission has proposed excessive and unjustified increases in the per unit or per license fees to be collected from various CMRS and PMRS licensees. These increases include:

- An increase of 41 percent in the per unit fee for CMRS Mobile Services;
- An increase of 50 percent in the per unit fee for CMRS One-Way Paging Services;
- An increase of 67 percent in the annual fee imposed on shared use private wireless radio licenses; and
- An increase of 43 percent in the annual fee imposed on exclusive use private wireless radio licenses.

Just as the Commission has failed generally to provide adequate information about the nature of its fiscal year 1997 fee proposals, it has not justified the large jump in fees for services that have been largely deregulated by Congress and the Commission. There must be further explanation by the Commission in order to justify its proposals; in the absence of such explanation, the Commission must reduce the level of the fiscal year 1997 fees proposed for CMRS and PMRS operations.

For those licensees that have converted from a PMRS classification to CMRS, PCIA concurs with the RAM Mobile Data USA Limited Partnership ("RMD") request that the

Commission should reiterate the policy stated in the Report and Order adopting the fiscal year 1996 regulatory fees.⁶ The Commission stated in that order that, “under our Rules, a licensee is entitled to a refund of an advance payment, upon request, whenever we ‘adopt new rules that nullify a license or other authorization.’ . . . Therefore, any licensee that converts from private to CMRS and has paid its fees in advance for a period of years, may file a request for refund with its initial CMRS regulatory fee payment.”⁷ As the Commission indicated it would do, and as RMD has requested, the Commission should issue a public notice detailing the procedures for seeking such a refund.

C. The Commission Should Establish a CMRS Messaging Service That Would Replace CMRS One-Way Paging and Would Include Two-Way Messaging Services

The Commission should adopt a CMRS Messaging Services fee category that would include both one-way paging and two-way paging. As explained in PCIA’s opening comments, two-way paging more closely resembles one-way paging than two-way broadband voice services in significant respects. These areas of alignment include operational and technical characteristics, the nature of the revenue streams associated with the services provided over the frequencies,⁸ and the amount of spectrum allocated for messaging services

⁶ RMD Comments at 1; *see Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, FCC 96-295 (July 5, 1996) (Report and Order) (“FY 1996 Order”).

⁷ *FY 1996 Order*, ¶ 21; *see* 47 C.F.R. § 1.1160(a)(2)(i).

⁸ *See* Comments of Paging Network, Inc. (“PageNet”) at 4-5.

versus two-way interactive voice services.⁹ Consistent with the Commission's prior statement of policies, two-way messaging should be included with one-way paging services.

In addition, PCIA supports the recommendations made by PageNet and RMD that the Commission generally consider the nature of the service provided over a particular set of frequencies authorized for use by a licensee.¹⁰ PageNet and RMD suggest that the Commission should base its regulatory fees upon the nature of the service provided to the public rather than the particular technology used. In PageNet's case, it cites its plans for using 900 MHz SMR spectrum to provide messaging services.¹¹ Similarly, RMD states that its SMR systems provide mobile data services that do not offer real time, two-way voice communications.¹² Given that these types of services are substantially similar to one-way and two-way paging services in terms of regulatory activities, then these services should be governed by the regulatory fee associated with CMRS Messaging Services rather than CMRS Mobile Services.

D. Conclusion

The Commission's proposed fiscal year 1997 regulatory fee schedule imposes inappropriately high costs on CMRS Mobile Services, CMRS One-Way Paging, and private wireless radio payors as judged under the regulatory fees standards adopted by Congress, as

⁹ See *id.* at 5-6.

¹⁰ See PageNet Comments at 7; RMD Comments at 2-3.

¹¹ PageNet Comments at 7.

¹² RMD Comments at 2.

well as the Congressional and Commission efforts to streamline and reduce the regulation of CMRS. Moreover, the Commission has failed to supply information and data necessary for interested parties like PCIA to evaluate the validity of the recommendations contained in the *Notice*. These significant issues must be addressed and satisfactorily resolved before the Commission can take final action on its proposals. In addition, the Commission should adopt a CMRS Messaging Services fee category that includes two-way paging in the same category as one-way paging, as well as similar services, regardless of the technology deployed.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

By: Katherine M. Holden By: Robert L. Hoggarth

Katherine M. Holden
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
(202) 429-7000

Its Attorneys

Mark J. Golden
Robert L. Hoggarth
Personal Communications Industry
Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314
(703) 739-0300

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